



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/171566

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 20, 2016, under Wis. Stat., §49.45(5), to review a decision by the Rock County Dept. of Social Services to recover Medical Assistance (MA), a hearing was held on March 30, 2016, at Janesville, Wisconsin, with the judge appearing by telephone. A hearing set for March 2, 2016 was rescheduled at the petitioner's request.

The issue for determination is whether the Division of Hearings and Appeals has authority to overturn an MA overpayment claim.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Rock County Dept. of Social Services  
P.O. Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. On March 17, 2014, the county agency sent petitioner a notice informing him that he was eligible for BadgerCare Plus (BC+) MA effective April 1, 2014, with no premium. The notice told petitioner that he needed to report if his income rose above \$972.50 in a month.

3. Petitioner started a job later that year. His income in October, 2014 was \$1,024.56. He did not report the job to the agency.
4. The county agency discovered the employment via a wage match in May, 2015. It eventually determined that petitioner would have been ineligible for BC+ beginning December 1, 2014 through April 30, 2015.
5. By notices dated November 30 and December 1, 2015, the county informed petitioner that he was overpaid \$7,239.25 in MA payments during the period December 1, 2014 through April 30, 2015, claim no. [REDACTED]. The December 1 notice informed petitioner that he could appeal the claim within 45 days of the notice, specifically by January 15, 2016.
6. Petitioner filed this appeal by a letter dated January 19, 2016, postmarked January 20, 2016.

### DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:...

2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

As of April 1, 2014 all childless adults became eligible for BC+ but with an income limit of 100% of the Federal Poverty Level, which, for a one-person household, is \$972.50. See Wis. Stat., §49.471(4)(a)4, and the MA Handbook, Appendix 50.1 for the current income limit. Thus when petitioner's income rose above that amount he lost BC+ eligibility.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Wis. Admin. Code, §HA 3.05(3)(a). Language concerning the right to appeal and the time limit is included on all department notices. An MA appeal must be made in writing; it cannot be made orally unless it is then reduced to writing. Wis. Admin. Code, §HA 3.05(2)(a). The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

In this case petitioner appears to have appealed an action to close his BC+, and he also mentioned the overpayment in his appeal letter. The discontinuance issue was resolved almost immediately, so the only remaining issue was the overpayment. The problem is that by the time petitioner filed the appeal, the time

limit for appealing the overpayment has passed. 45 days from December 1, 2015 was January 15, 2016. Petitioner dated his appeal letter January 19 and it was postmarked January 20, five days late.

I must conclude that the overpayment is valid; because petitioner failed to appeal timely the Division of Hearings and Appeals no longer has authority to reverse the claim.

### **CONCLUSIONS OF LAW**

Petitioner's appeal of a BC+ overpayment claim was filed untimely.

**THEREFORE, it is** **ORDERED**

That the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 1st day of April, 2016

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 1, 2016.

Rock County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability